

AN ACT

relating to the continuation and functions of the division of workers' compensation of the Texas Department of Insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.004(b), Insurance Code, is amended to read as follows:

(b) Unless continued as provided by Chapter 325, Government Code, the duties of the division of workers' compensation of the Texas Department of Insurance under Title 5, Labor Code, expire September 1, 2017 [~~2011~~], or another date designated by the legislature.

SECTION 2. Sections 1305.355(e), (f), and (g), Insurance Code, are amended to read as follows:

(e) A party to a medical dispute that remains unresolved after a review under this section is entitled to a hearing and [~~may seek~~] judicial review of the decision in accordance with Section 1305.356. The division of workers' compensation and the department are not considered to be parties to the medical dispute.

(f) A determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of a dispute [~~any appeal~~], and the carrier and network shall comply with the determination.

(g) If a contested case hearing or judicial review is not sought under Section 1305.356 [~~this section~~], the carrier and

1 network shall comply with the independent review organization's
2 determination.

3 SECTION 3. Subchapter H, Chapter 1305, Insurance Code, is
4 amended by adding Section 1305.356 to read as follows:

5 Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL
6 REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute
7 that remains unresolved after a review under Section 1305.355 is
8 entitled to a contested case hearing. A hearing under this
9 subsection shall be conducted by the department's division of
10 workers' compensation in the same manner as a hearing conducted
11 under Section 413.0311, Labor Code.

12 (b) At a contested case hearing held under Subsection (a),
13 the hearing officer conducting the hearing shall consider
14 evidence-based treatment guidelines adopted by the network under
15 Section 1305.304.

16 (c) A party that has exhausted all administrative remedies
17 under Subsection (a) and is aggrieved by a final decision of the
18 department's division of workers' compensation may seek judicial
19 review of the decision.

20 (d) Judicial review under Subsection (c) shall be conducted
21 in the manner provided for judicial review of a contested case under
22 Subchapter G, Chapter 2001, Government Code, and is governed by the
23 substantial evidence rule.

24 SECTION 4. Section 2051.151(e), Insurance Code, is amended
25 to read as follows:

26 (e) An insurance company that fails to comply with this
27 section commits an ~~[a Class D]~~ administrative violation under

1 Subtitle A, Title 5, Labor Code.

2 SECTION 5. Section 2053.206(a), Insurance Code, is amended
3 to read as follows:

4 (a) A person commits an ~~[a Class A]~~ administrative violation
5 under Subtitle A, Title 5, Labor Code, if the person engages in
6 conduct that violates this subchapter.

7 SECTION 6. Section 402.023, Labor Code, is amended by
8 adding Subsection (c-1) to read as follows:

9 (c-1) The division shall adopt a policy outlining the
10 division's complaint process from receipt of the initial complaint
11 to the complaint's disposition.

12 SECTION 7. Subchapter B, Chapter 402, Labor Code, is
13 amended by adding Section 402.0231 to read as follows:

14 Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS.

15 (a) The division shall develop procedures to formally document and
16 analyze complaints received by the division.

17 (b) The division shall compile detailed statistics on all
18 complaints received and analyze complaint information trends,
19 including:

20 (1) the number of complaints;
21 (2) the source of each complaint;
22 (3) the types of complaints;
23 (4) the length of time from the receipt of the
24 complaint to its disposition; and

25 (5) the disposition of complaints.

26 (c) The division shall further analyze the information
27 compiled under Subsection (b) by field office and by program.

1 (d) The division shall report the information compiled and
2 analyzed under Subsections (b) and (c) to the commissioner at
3 regular intervals.

4 SECTION 8. Section 402.073, Labor Code, is amended to read
5 as follows:

6 Sec. 402.073. COOPERATION WITH STATE OFFICE OF
7 ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief
8 administrative law judge of the State Office of Administrative
9 Hearings ~~[by rule]~~ shall adopt a memorandum of understanding
10 governing administrative procedure law hearings under this
11 subtitle conducted by the State Office of Administrative Hearings
12 in the manner provided for a contested case hearing under Chapter
13 2001, Government Code. The memorandum of understanding must
14 address the payment of costs by parties to a medical fee dispute
15 under Section 413.0312.

16 (b) In a case in which a hearing is conducted by the State
17 Office of Administrative Hearings under Section 413.031 or [7]
18 413.055, ~~[or 415.034]~~ the administrative law judge who conducts
19 the hearing for the State Office of Administrative Hearings shall
20 enter the final decision in the case after completion of the
21 hearing.

22 (c) In a case in which a hearing is conducted in conjunction
23 with Section 402.072, 407.046, ~~[or]~~ 408.023, or 415.034, and in
24 other cases under this subtitle that are not subject to Subsection
25 (b), the administrative law judge who conducts the hearing for the
26 State Office of Administrative Hearings shall propose a decision to
27 the commissioner for final consideration and decision by the

1 commissioner.

2 (d) The notice of the commissioner's order must include a
3 statement of the right of the person to judicial review of the
4 order.

5 (e) In issuing an order under this section, the commissioner
6 shall comply with the requirements applicable to a state agency
7 under Section 2001.058, Government Code.

8 SECTION 9. Section 403.001(a), Labor Code, is amended to
9 read as follows:

10 (a) Except as provided by Sections 403.006, ~~[and]~~ 403.007,
11 and 403.008, or as otherwise provided by law, money collected under
12 this subtitle, including ~~[administrative penalties and]~~ advance
13 deposits for purchase of services, shall be deposited in the
14 general revenue fund of the state treasury to the credit of the
15 Texas Department of Insurance operating account.

16 SECTION 10. Chapter 403, Labor Code, is amended by adding
17 Section 403.008 to read as follows:

18 Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES.
19 Administrative penalties collected under this subtitle shall be
20 deposited in the general revenue fund.

21 SECTION 11. Section 408.0041, Labor Code, is amended by
22 amending Subsections (b) and (h) and adding Subsections (b-1),
23 (f-2), (f-3), and (f-4) to read as follows:

24 (b) Except as provided by Section 408.1225(f), a [A] medical
25 examination requested under Subsection (a) shall be performed by
26 the next available doctor on the division's list of certified
27 designated doctors whose credentials are appropriate for the area

1 of the body affected by the injury ~~[issue in question]~~ and the
 2 injured employee's diagnosis ~~[medical condition]~~ as determined by
 3 commissioner rule. ~~[A designated doctor, other than a~~
 4 ~~chiropractor, is subject to Section 408.0043. A designated doctor~~
 5 ~~who is a chiropractor is subject to Section 408.0045.]~~ The division
 6 shall assign a designated doctor not later than the 10th day after
 7 the date on which the request under Subsection (a) is approved, and
 8 the examination must be conducted not later than the 21st day after
 9 the date on which the commissioner issues the order under
 10 Subsection (a). An examination under this section may not be
 11 conducted more frequently than every 60 days, unless good cause for
 12 more frequent examinations exists, as defined by commissioner
 13 rules.

14 (b-1) A designated doctor, other than a chiropractor, is
 15 subject to Section 408.0043. A designated doctor who is a
 16 chiropractor is subject to Section 408.0045. To the extent of a
 17 conflict between this section and Section 408.0043 or 408.0045,
 18 this section controls.

19 (f-2) An employee required to be examined by a designated
 20 doctor may request a medical examination to determine maximum
 21 medical improvement and the employee's impairment rating from the
 22 treating doctor or from another doctor to whom the employee is
 23 referred by the treating doctor if:

24 (1) the designated doctor's opinion is the employee's
 25 first evaluation of maximum medical improvement and impairment
 26 rating; and

27 (2) the employee is not satisfied with the designated

1 doctor's opinion.

2 (f-3) The commissioner shall provide the insurance carrier
3 and the employee with reasonable time to obtain and present the
4 opinion of a doctor selected under Subsection (f) or (f-2) before
5 the commissioner makes a decision on the merits of the issue.

6 (f-4) The commissioner by rule shall adopt guidelines
7 prescribing the circumstances under which an examination by the
8 employee's treating doctor or another doctor to whom the employee
9 is referred by the treating doctor to determine any issue under
10 Subsection (a), other than an examination under Subsection (f-2),
11 may be appropriate.

12 (h) The insurance carrier shall pay for:

13 (1) an examination required under Subsection (a), ~~or~~
14 (f), or (f-2), unless otherwise prohibited by this subtitle or by an
15 order or rule of the commissioner; and

16 (2) the reasonable expenses incident to the employee
17 in submitting to the examination.

18 SECTION 12. Section 408.1225, Labor Code, is amended by
19 amending Subsections (a), (b), and (e) and adding Subsections
20 (a-1), (a-2), (a-3), (a-4), (a-5), and (f) to read as follows:

21 (a) To be eligible to serve as a designated doctor, a doctor
22 must maintain an active certification by the division ~~[meet~~
23 ~~specific qualifications, including training in the determination~~
24 ~~of impairment ratings and demonstrated expertise in performing~~
25 ~~examinations and making evaluations as described by Section~~
26 ~~408.0041. The commissioner shall develop qualification standards~~
27 ~~and administrative policies to implement this subsection and may~~

~~adopt rules as necessary~~].

(a-1) The commissioner by rule shall develop a process for the certification of a designated doctor.

(a-2) The rules adopted by the commissioner under Subsection (a-1) must:

(1) require the division to evaluate the qualification of designated doctors for certification using eligibility requirements, including:

(A) educational experience;

(B) previous training; and

(C) demonstrated ability to perform the specific designated doctor duties described by Section 408.0041; and

(2) require standard training and testing to be completed in accordance with policies and guidelines developed by the division.

(a-3) The division shall develop guidelines for certification training programs for certification of a designated doctor under Subsection (a-1) to ensure a designated doctor's competency and continued competency in providing assessments, including:

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

(a-4) The division shall develop and implement a procedure to periodically review and update the guidelines developed under Subsection (a-3).

(a-5) The division may authorize an independent training

1 and testing provider to conduct the certification program for the
2 division under the guidelines developed under Subsection (a-3).

3 (b) The commissioner shall ensure the quality of designated
4 doctor decisions and reviews through active monitoring of the
5 decisions and reviews, and may take action as necessary to:

6 (1) restrict the participation of a designated doctor;

7 ~~[ex]~~

8 (2) deny renewal of ~~[remove]~~ a ~~[doctor from inclusion~~
9 ~~on the department's list of]~~ designated doctor's certification; or

10 (3) revoke a designated doctor's certification under
11 Section 413.044 ~~[doctors]~~.

12 (e) A designated doctor, other than a chiropractor, is
13 subject to Section 408.0043. A designated doctor who is a
14 chiropractor is subject to Section 408.0045. To the extent of a
15 conflict between this section and Section 408.0043 or 408.0045,
16 this section controls.

17 (f) A designated doctor shall continue providing services
18 related to a case assigned to the designated doctor, including
19 performing subsequent examinations or acting as a resource for
20 division disputes, unless the division authorizes the designated
21 doctor to discontinue providing services. The commissioner by rule
22 shall prescribe the circumstances under which a designated doctor
23 is permitted to discontinue providing services, including:

24 (1) the doctor decides to stop practicing in the
25 workers' compensation system; or

26 (2) the doctor relocates the doctor's residence or
27 practice.

1 SECTION 13. Section 409.021(e), Labor Code, is amended to
2 read as follows:

3 (e) An insurance carrier commits an administrative [a]
4 violation if the insurance carrier does not initiate payments or
5 file a notice of refusal as required by this section. [~~A violation~~
6 ~~under this subsection shall be assessed at \$500 if the carrier~~
7 ~~initiates compensation or files a notice of refusal within five~~
8 ~~working days of the date required by Subsection (a), \$1,500 if the~~
9 ~~carrier initiates compensation or files a notice of refusal more~~
10 ~~than five and less than 16 working days of the date required by~~
11 ~~Subsection (a), \$2,500 if the carrier initiates compensation or~~
12 ~~files a notice of refusal more than 15 and less than 31 working days~~
13 ~~of the date required by Subsection (a), or \$5,000 if the carrier~~
14 ~~initiates compensation or files a notice of refusal more than 30~~
15 ~~days after the date required by Subsection (a). The administrative~~
16 ~~penalties are not cumulative.~~]

17 SECTION 14. Section 410.023, Labor Code, is amended by
18 amending Subsection (b) and adding Subsections (c) and (d) to read
19 as follows:

20 (b) The division shall require the party requesting the
21 benefit review conference to provide documentation of efforts made
22 to resolve the disputed issues before the request was submitted.

23 (c) The commissioner by rule shall:

24 (1) adopt guidelines regarding the type of information
25 necessary to satisfy the requirements of Subsection (b); and

26 (2) establish a process through which the division
27 evaluates the sufficiency of the documentation provided under

1 Subsection (b) [~~this requirement~~].

2 (d) The division may deny a request for a benefit review
3 conference if the party requesting the benefit review conference
4 does not provide the documentation required under Subsection (b).

5 SECTION 15. Section 410.028, Labor Code, is amended to read
6 as follows:

7 Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION.

8 (a) A scheduled benefit review conference shall be conducted even
9 though a party fails to attend unless the benefit review officer
10 determines that good cause, as defined by commissioner rule, exists
11 to reschedule the conference.

12 (b) If a party to a benefit review conference under Section
13 410.023 requests that the benefit review conference be rescheduled
14 under this section, the party must submit a request in the same
15 manner as an initial request under Section 410.023. The division
16 shall evaluate a request for a rescheduled benefit review
17 conference received under this section in the same manner as an
18 initial request received under Section 410.023.

19 (c) If a [~~A party commits an administrative violation if~~
20 ~~the~~] party fails to request that a benefit review conference be
21 rescheduled in the time required by commissioner rule or fails to
22 attend a benefit review conference without good cause as defined
23 [~~determined~~] by commissioner rule, the party forfeits the party's
24 entitlement to attend a benefit review conference on the issue in
25 dispute, unless a [~~the~~] benefit review officer is authorized to
26 schedule an additional benefit review conference under Section
27 410.026(b).

1 (d) The commissioner shall adopt rules necessary to
2 implement and enforce this section, including rules that:

- 3 (1) define good cause; and
4 (2) establish deadlines for requesting that a benefit
5 review conference be rescheduled under Subsection (b).

6 SECTION 16. Section 410.203(b), Labor Code, is amended to
7 read as follows:

8 (b) The appeals panel may:

- 9 (1) reverse the decision of the hearings officer and
10 render a new decision; ~~[or]~~
11 (2) reverse the decision of the hearings officer and
12 remand the case to the hearing officer for further consideration
13 and development of evidence; or

14 (3) affirm the decision of the hearings officer in a
15 case described by Section 410.204(a-1).

16 SECTION 17. Section 410.204, Labor Code, is amended by
17 amending Subsection (a) and adding Subsection (a-1) to read as
18 follows:

19 (a) The appeals panel shall review each request and issue a
20 written decision on each reversed or remanded case. The appeals
21 panel may issue a written decision on an affirmed case as described
22 by Subsection (a-1). The decision must be in writing and shall be
23 issued not later than the 45th day after the date on which the
24 written response to the request for appeal is filed. The appeals
25 panel shall file a copy of the decision with the commissioner.

26 (a-1) An appeals panel may only issue a written decision in
27 a case in which the panel affirms the decision of a hearings officer

1 if the case:

2 (1) is a case of first impression;

3 (2) involves a recent change in law; or

4 (3) involves errors at the contested case hearing that

5 require correction but do not affect the outcome of the hearing,

6 including:

7 (A) findings of fact for which insufficient
8 evidence exists;

9 (B) incorrect conclusions of law;

10 (C) findings of fact or conclusions of law
11 regarding matters that were not properly before the hearings
12 officer; and

13 (D) legal errors not otherwise described by this
14 subdivision.

15 SECTION 18. Sections 413.031(k) and (k-1), Labor Code, are
16 amended to read as follows:

17 (k) A party to a medical dispute [~~, other than a medical~~
18 ~~dispute regarding spinal surgery subject to Subsection (1) and a~~
19 ~~dispute subject to Section 413.0311,~~] that remains unresolved after
20 a review of the medical service under this section is entitled to a
21 hearing under Section 413.0311 or 413.0312, as applicable. [A
22 ~~hearing under this subsection shall be conducted by the State~~
23 ~~Office of Administrative Hearings not later than the 60th day after~~
24 ~~the date on which the party notifies the division of the request for~~
25 ~~a hearing. The hearing shall be conducted in the manner provided~~
26 ~~for a contested case under Chapter 2001, Government Code.]~~

27 (k-1) A party who has exhausted all administrative remedies

1 described by ~~[under]~~ Subsection (k) and who is aggrieved by a final
2 decision of the division or the State Office of Administrative
3 Hearings may seek judicial review of the decision. Judicial review
4 under this subsection shall be conducted in the manner provided for
5 judicial review of a contested case under Subchapter G, Chapter
6 2001, Government Code.

7 SECTION 19. The heading to Section 413.0311, Labor Code, is
8 amended to read as follows:

9 Sec. 413.0311. REVIEW OF ~~[CERTAIN]~~ MEDICAL NECESSITY
10 DISPUTES; CONTESTED CASE HEARING.

11 SECTION 20. Section 413.0311(a), Labor Code, is amended to
12 read as follows:

13 (a) This section applies only to ~~[the following medical~~
14 ~~disputes that remain unresolved after any applicable review under~~
15 ~~Sections 413.031(b) through (i)].~~

16 ~~[(1) a medical fee dispute in which the amount of~~
17 ~~reimbursement sought by the requester in its request for medical~~
18 ~~dispute resolution does not exceed \$2,000,~~

19 ~~[(2)] an appeal of an independent review organization~~
20 decision regarding determination of the ~~[retrospective]~~ medical
21 necessity for a health care service ~~[for which the amount billed~~
22 ~~does not exceed \$3,000, and~~

23 ~~[(3) an appeal of an independent review organization~~
24 ~~decision regarding determination of the concurrent or prospective~~
25 ~~medical necessity for a health care service].~~

26 SECTION 21. Subchapter C, Chapter 413, Labor Code, is
27 amended by adding Section 413.0312 to read as follows:

1 Sec. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT
2 REVIEW CONFERENCE. (a) This section applies only to a medical fee
3 dispute that remains unresolved after any applicable review under
4 Sections 413.031(b) through (i).

5 (b) Subject to Subsection (e), a party to a medical fee
6 dispute described by Subsection (a) must adjudicate the dispute in
7 the manner required by Subchapter B, Chapter 410.

8 (c) At a benefit review conference conducted under this
9 section, the parties to the dispute may not resolve the dispute by
10 negotiating fees that are inconsistent with any applicable fee
11 guidelines adopted by the commissioner.

12 (d) If issues remain unresolved after a benefit review
13 conference, the parties may elect to engage in arbitration as
14 provided by Section 410.104.

15 (e) If arbitration is not elected as described by Subsection
16 (d), a party to a medical fee dispute described by Subsection (a) is
17 entitled to a contested case hearing. A hearing under this
18 subsection shall be conducted by the State Office of Administrative
19 Hearings in the manner provided for a contested case under Chapter
20 2001, Government Code.

21 (f) The commissioner or the division may participate in a
22 contested case hearing conducted under Subsection (e) if the
23 hearing involves the interpretation of fee guidelines adopted by
24 the commissioner. The division and the department are not
25 considered to be parties to the medical fee dispute for purposes of
26 this section.

27 (g) Except as otherwise provided by this subsection, the

nonprevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. If the injured employee is the nonprevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. The party required to reimburse the division under this subsection shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(h) The State Office of Administrative Hearings shall timely notify the division if a dispute is dismissed before issuance of a decision under this section. In the event of a dismissal, the party requesting the hearing, other than the injured employee, shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. If the injured employee requested the hearing, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. The responsible party shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(i) The State Office of Administrative Hearings shall identify the nonprevailing party and any costs for services provided by the office under this section in its final decision. Money collected by the division under this section shall be deposited in the general revenue fund to the credit of the Texas

1 Department of Insurance operating account.

2 (j) Interest on the amount of reimbursement required by this
3 section that remains unpaid accrues at a rate provided by Section
4 401.023 beginning on the 45th day after the date the division
5 submits the bill or statement to a party until the date the
6 reimbursement is paid. Failure to pay the division as required by
7 this section is an administrative violation under this subtitle.

8 (k) The commissioner by rule shall establish procedures to
9 enable the division to charge a party to a medical fee dispute,
10 other than an injured employee, for the costs of services provided
11 by the State Office of Administrative Hearings.

12 SECTION 22. Section 413.044(b), Labor Code, is amended to
13 read as follows:

14 (b) Sanctions imposed under Subsection (a) may include:

15 (1) revocation of certification for a designated
16 doctor on ~~[removal or suspension from]~~ the division list of
17 designated doctors; or

18 (2) restrictions on the reviews made by the person as a
19 designated doctor.

20 SECTION 23. Section 413.0512, Labor Code, is amended by
21 amending Subsections (b), (c), (d), (e), and (f) and adding
22 Subsections (g) and (h) to read as follows:

23 (b) The agencies that regulate health professionals who are
24 licensed or otherwise authorized to practice a health profession
25 under Title 3, Occupations Code, and who are involved in the
26 provision of health care as part of the workers' compensation
27 system in this state ~~[Texas State Board of Medical Examiners and the~~

1 ~~Texas Board of Chiropractic Examiners, with input from their~~
 2 ~~respective professional associations,~~ shall develop lists of
 3 health care providers ~~[physicians and chiropractors]~~ licensed or
 4 otherwise regulated by those agencies who have demonstrated
 5 experience in workers' compensation or utilization review. The
 6 medical advisor shall consider appointing some of the members of
 7 the medical quality review panel from the names on those lists and,
 8 when appointing members of the medical quality review panel, shall
 9 select specialists from various health care specialty fields to
 10 serve on the panel to ensure that the membership of the panel has
 11 expertise in a wide variety of health care specialty fields. The
 12 medical advisor shall also consider nominations for the panel made
 13 by labor, business, and insurance organizations.

14 (c) The medical quality review panel shall recommend to the
 15 medical advisor:

16 (1) appropriate action regarding doctors, other
 17 health care providers, insurance carriers, utilization review
 18 agents, and independent review organizations; ~~and~~

19 (2) the addition or deletion of doctors from the list
 20 of approved doctors under Section 408.023; and

21 (3) the certification, revocation of certification,
 22 or denial of renewal of certification ~~[or the list]~~ of a designated
 23 doctor ~~[doctors established]~~ under Section 408.1225.

24 (d) A person who serves on the medical quality review panel
 25 is immune from suit and from civil liability for an act performed,
 26 or a recommendation made, within the scope of the person's
 27 functions as a member of the panel if the person acts without malice

1 and in the reasonable belief that the action or recommendation is
2 warranted by the facts known to that person. In the event of a civil
3 action brought against a member of the panel that arises from the
4 person's participation on the panel, the person is entitled to the
5 same protections afforded the commissioner [~~a commission member~~]
6 under Section 402.00123 [~~402.010~~].

7 (e) The actions of a person serving on the medical quality
8 review panel do not constitute utilization review and are not
9 subject to Chapter 4201 [~~Article 21.58A~~], Insurance Code.

10 (f) A member of the medical quality review panel[~~, other~~
11 ~~than a chiropractor,~~] who reviews a specific workers' compensation
12 case is subject to Section 408.0043, 408.0044, or [~~A chiropractor~~
13 ~~who reviews a specific workers' compensation case is subject to~~
14 ~~Section~~] 408.0045, as applicable.

15 (g) The medical advisor shall notify the division if the
16 medical advisor determines that:

17 (1) it is no longer necessary for the medical quality
18 review panel to include a member that practices in a particular
19 health care specialty field; or

20 (2) there is a need for the panel to include a member
21 that practices in a particular health care specialty field not
22 represented on the panel.

23 (h) If the division receives notice from the medical advisor
24 under Subsection (g)(2), the division may enter into agreements
25 with other state agencies to access, as necessary, expertise in
26 that health care specialty field.

27 SECTION 24. Subchapter E, Chapter 413, Labor Code, is

amended by adding Sections 413.05115, 413.05121, and 413.05122 to read as follows:

Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. (a) The division shall develop, and the commissioner shall adopt, criteria concerning the medical case review process under this subchapter. In developing the criteria, and before adopting the criteria, the division and the commissioner, as applicable, must consult with the medical advisor and seek input from potentially affected parties, including health care providers and insurance carriers.

(b) The criteria developed and adopted under this section must establish a clear process or processes:

(1) for handling complaint-based medical case reviews; and

(2) through which the division selects health care providers or other entities for a compliance audit or review.

(c) The division shall make the criteria developed and adopted under this section available on the Internet website maintained by the division.

Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical advisor shall establish the quality assurance panel within the medical quality review panel to:

(1) provide an additional level of evaluation in medical case reviews; and

(2) assist the medical advisor in performing the advisor's duties under Section 413.0511(b)(6) and the medical quality review panel in performing that panel's duties under Section 413.0512.

1 (b) Members of the quality assurance panel shall evaluate
2 medical care and recommend enforcement actions to the medical
3 advisor.

4 (c) The quality assurance panel shall meet periodically to
5 discuss issues and otherwise offer assistance to the medical
6 advisor and the medical quality review panel under Subsection
7 (a)(2).

8 Sec. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES;
9 TRAINING. (a) The commissioner, after consultation with the
10 medical advisor, shall adopt rules concerning the operation of the
11 medical quality review panel, including rules that establish:

12 (1) the qualifications necessary for a health care
13 provider to serve on the medical quality review panel;

14 (2) the composition of the medical quality review
15 panel, including the number of members to be included on the panel
16 and the health care specialty fields required to be represented by
17 the members of the panel;

18 (3) the maximum length of time a health care provider
19 may serve on the medical quality review panel;

20 (4) a policy defining situations that constitute a
21 conflict of interest for a member of the medical quality review
22 panel;

23 (5) procedures and grounds for removing a member of
24 the medical quality review panel from the panel, including as a
25 ground for removal that a member is repeatedly delinquent in
26 conducting case reviews; and

27 (6) a procedure through which members of the medical

1 quality review panel are notified concerning the status and
2 enforcement outcomes of cases resulting from the medical quality
3 review process.

4 **(b) In addition to the rules required under Subsection (a),**
5 the commissioner shall adopt rules concerning the training
6 requirements for members of the medical quality review panel. The
7 rules adopted under this subsection must ensure that panel members
8 are fully aware of any requirements imposed by this subtitle
9 concerning the medical quality review process and the division's
10 goals concerning the process. The rules adopted under this
11 subsection may require members to receive training on any topic
12 determined by the division or the commissioner to be relevant to the
13 operations of the panel and must require members of the panel to
14 receive training concerning:

15 **(1) administrative violations that affect the**
16 delivery of appropriate medical care;

17 **(2) the confidentiality requirements described by**
18 Section 413.0513 and the immunity from liability provided to
19 members of the panel under Section 413.054; and

20 **(3) the medical quality review criteria adopted under**
21 Section 413.05115.

22 SECTION 25. Section 413.054(a), Labor Code, is amended to
23 read as follows:

24 **(a)** A person who performs services for the division as a
25 designated doctor, an independent medical examiner, a doctor
26 performing a medical case review, or a member of a peer review panel
27 has the same immunity from liability as the commissioner under

1 Section 402.00123 [~~402.0024~~].

2 SECTION 26. Section 414.005, Labor Code, is amended to read
3 as follows:

4 Sec. 414.005. INVESTIGATION UNIT. (a) The division shall
5 maintain an investigation unit to conduct investigations relating
6 to alleged violations of this subtitle, commissioner rules, or a
7 commissioner order or decision, with particular emphasis on
8 violations of Chapters 415 and 416.

9 (b) As often as the commissioner considers necessary, the
10 commissioner or the investigation unit may review the operations of
11 a person regulated by the division, including an agent of the person
12 performing functions regulated by the division, to determine
13 compliance with this subtitle.

14 (c) The review described by Subsection (b) may include
15 on-site visits to the person's premises. The commissioner is not
16 required to announce an on-site visit in advance.

17 (d) During an on-site visit, a person regulated by the
18 division shall make available to the division all records relating
19 to the person's participation in the workers' compensation system.

20 (e) The commissioner by rule shall prescribe the procedures
21 to be used for both announced and unannounced on-site visits
22 authorized under this section, including specifying the types of
23 records subject to inspection.

24 SECTION 27. Section 415.0035(e), Labor Code, is amended to
25 read as follows:

26 (e) A person regulated by the division under this title [~~An~~
27 ~~insurance carrier or health care provider~~] commits an

1 administrative violation if the ~~[that]~~ person violates this
2 subtitle or a rule, order, or decision of the commissioner.

3 SECTION 28. Section 415.008(a), Labor Code, is amended to
4 read as follows:

5 (a) A person commits an administrative ~~[a]~~ violation if the
6 person, to obtain or deny a payment of a workers' compensation
7 benefit or the provision of a benefit for the person or another,
8 knowingly or intentionally:

9 (1) makes a false or misleading statement;

10 (2) misrepresents or conceals a material fact;

11 (3) fabricates, alters, conceals, or destroys a
12 document; or

13 (4) conspires to commit an act described by
14 Subdivision (1), (2), or (3).

15 SECTION 29. Sections 415.009 and 415.010, Labor Code, are
16 amended to read as follows:

17 Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.

18 ~~[(a)]~~ A person commits an administrative ~~[a]~~ violation if the
19 person brings, prosecutes, or defends an action for benefits under
20 this subtitle or requests initiation of an administrative violation
21 proceeding that does not have a basis in fact or is not warranted by
22 existing law or a good faith argument for the extension,
23 modification, or reversal of existing law.

24 ~~[(b)] A violation under Subsection (a) is a Class B~~
25 ~~administrative violation.]~~

26 Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE
27 VIOLATION. ~~[(a)]~~ A party to an agreement approved by the division

1 commits an administrative [a] violation if the person breaches a
2 provision of the agreement.

3 ~~[(b) A violation under Subsection (a) is a Class C~~
4 ~~administrative violation.]~~

5 SECTION 30. The heading to Subchapter B, Chapter 415, Labor
6 Code, is amended to read as follows:

7 SUBCHAPTER B. SANCTIONS [~~PENALTIES~~]

8 SECTION 31. Section 415.021(a), Labor Code, is amended to
9 read as follows:

10 (a) In addition to any other provisions in this subtitle
11 relating to violations, a person commits an administrative
12 violation if the person violates, fails to comply with, or refuses
13 to comply with this subtitle or a rule, order, or decision of the
14 commissioner, including an emergency cease and desist order issued
15 under Section 415.0211. In addition to any sanctions,
16 administrative penalty, or other remedy authorized by this
17 subtitle, the commissioner may assess an administrative penalty
18 against a person who commits an administrative violation. The
19 administrative penalty shall not exceed \$25,000 per day per
20 occurrence. Each day of noncompliance constitutes a separate
21 violation. The commissioner's authority under this chapter is in
22 addition to any other authority to enforce a sanction, penalty,
23 fine, forfeiture, denial, suspension, or revocation otherwise
24 authorized by law.

25 SECTION 32. Subchapter B, Chapter 415, Labor Code, is
26 amended by adding Section 415.0211 to read as follows:

27 Sec. 415.0211. EMERGENCY CEASE AND DESIST ORDER. (a) The

1 commissioner ex parte may issue an emergency cease and desist order
2 if:

3 (1) the commissioner believes a person regulated by
4 the division under this title is engaging in conduct violating a
5 law, rule, or order; and

6 (2) the commissioner believes that the alleged conduct
7 under Subdivision (1) will result in harm to the health, safety, or
8 welfare of another person.

9 (b) On issuance of an order under Subsection (a), the
10 commissioner shall serve on the affected person an order that
11 contains a statement of the charges and requires the person
12 immediately to cease and desist from the acts, methods, or
13 practices stated in the order. The commissioner shall serve the
14 order by registered or certified mail, return receipt requested, to
15 the affected person's last known address. The order is final on the
16 31st day after the date the affected person receives the order,
17 unless the affected person requests a hearing under Subsection (c).

18 (c) A person affected by an order is entitled to request a
19 hearing to contest the order. The affected person must request the
20 hearing not later than the 30th day after the date the person
21 receives the order required by Subsection (b). A request to contest
22 an order must:

23 (1) be in writing;
24 (2) be directed to the commissioner; and
25 (3) state the grounds for the request to set aside or
26 modify the order.

27 (d) On receiving a request for a hearing, the commissioner

1 shall serve notice of the time and place of the hearing. The
2 hearing is subject to the procedures for a contested case under
3 Chapter 2001, Government Code. The hearing shall be held not later
4 than the 10th day after the date the commissioner receives the
5 request for a hearing unless the parties mutually agree to a later
6 hearing date. At the hearing, the person requesting the hearing is
7 entitled to show cause why the order should not be affirmed.
8 Following receipt of the proposal for decision from the State
9 Office of Administrative Hearings regarding the hearing, the
10 commissioner shall wholly or partly affirm, modify, or set aside
11 the order.

12 (e) Pending a hearing under this section, an order continues
13 in effect unless the order is stayed by the commissioner.

14 SECTION 33. Section 402.072, Labor Code, is transferred to
15 Subchapter B, Chapter 415, Labor Code, and redesignated as Section
16 415.0215, Labor Code, to read as follows:

17 Sec. 415.0215 [~~402.072~~]. SANCTIONS. (a) The division may
18 impose sanctions against any person regulated by the division under
19 this subtitle.

20 (b) Only the commissioner may impose:

21 (1) a sanction that deprives a person of the right to
22 practice before the division or of the right to receive
23 remuneration under this subtitle for a period exceeding 30 days; or

24 (2) another sanction suspending for more than 30 days
25 or revoking a license, certification, or permit required for
26 practice in the field of workers' compensation.

27 (c) A sanction imposed by the division is binding pending

1 appeal.

2 SECTION 34. Sections 415.025, 415.032, 415.033, and
3 415.034, Labor Code, are amended to read as follows:

4 Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR
5 PENALTY. A reference in this code or other law, or in rules of the
6 former Texas Workers' Compensation Commission or the commissioner,
7 to a particular class of violation, administrative violation, or
8 penalty shall be construed as a reference to an administrative
9 penalty. An ~~[Except as otherwise provided by this subtitle, an]~~
10 administrative penalty may not exceed \$25,000 per day per
11 occurrence. Each day of noncompliance constitutes a separate
12 violation.

13 Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION;
14 RESPONSE. (a) If investigation by the division indicates that an
15 administrative violation has occurred, the division shall notify
16 the person alleged to have committed the violation in writing of:

- 17 (1) the charge;
18 (2) the proposed sanction ~~[penalty]~~;
19 (3) the right to consent to the charge and the sanction
20 ~~[penalty]~~; and
21 (4) the right to request a hearing.

22 (b) Not later than the 20th day after the date on which
23 notice is received, the charged party shall:

- 24 (1) remit the amount of the sanction ~~[penalty]~~ to the
25 division or otherwise consent to the imposed sanction; or
26 (2) submit to the division a written request for a
27 hearing.

1 Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a
2 charged party fails to respond as required under Section 415.032,
3 ~~[the penalty is due and]~~ the division shall initiate enforcement
4 proceedings.

5 Sec. 415.034. HEARING PROCEDURES. ~~[(a)]~~ On the request of
6 the charged party or the commissioner, the State Office of
7 Administrative Hearings shall set a hearing. The hearing shall be
8 conducted in the manner provided for a contested case under Chapter
9 2001, Government Code (the administrative procedure law).

10 ~~[(b) At the close of the hearing, the hearing officer~~
11 ~~conducting the hearing shall make findings of fact and conclusions~~
12 ~~of law and shall issue a written decision. If the hearing officer~~
13 ~~determines that an administrative violation has occurred, the~~
14 ~~hearing officer shall include in the decision the amount of the~~
15 ~~administrative penalty assessed and shall order payment of the~~
16 ~~penalty.~~

17 ~~[(c) The findings of fact, the decision, and the order shall~~
18 ~~be sent immediately to the charged party.]~~

19 SECTION 35. Subchapter C, Chapter 415, Labor Code, is
20 amended by adding Section 415.036 to read as follows:

21 Sec. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S
22 ORDER. An order of the commissioner is subject to judicial review
23 under the substantial evidence rule.

24 SECTION 36. Subchapter C, Chapter 504, Labor Code, is
25 amended by adding Sections 504.054, 504.055, and 504.056 to read as
26 follows:

27 Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW

1 OF INDEPENDENT REVIEW. (a) A party to a medical dispute that
2 remains unresolved after the review described by Section
3 504.053(d)(3) is entitled to a contested case hearing. A hearing
4 under this subsection shall be conducted by the division in the same
5 manner as a hearing conducted under Section 413.0311.

6 (b) The hearing officer conducting the contested case
7 hearing under Subsection (a) shall consider any treatment
8 guidelines adopted by the political subdivision or pool that
9 provides medical benefits under Section 504.053(b)(2) if those
10 guidelines meet the standards provided by Section 413.011(e).

11 (c) A party that has exhausted all administrative remedies
12 under Subsection (a) and is aggrieved by a final decision of the
13 division may seek judicial review of the decision.

14 (d) Judicial review under Subsection (c) shall be conducted
15 in the manner provided for judicial review of a contested case under
16 Subchapter G, Chapter 2001, Government Code, and is governed by the
17 substantial evidence rule.

18 (e) A decision of the independent review organization is
19 binding during the pendency of a dispute.

20 Sec. 504.055. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR
21 CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE
22 OF EMPLOYMENT. (a) In this section, "first responder" means:

23 (1) an individual employed by a political subdivision
24 of this state who is:

25 (A) a peace officer under Article 2.12, Code of
26 Criminal Procedure;

27 (B) a person licensed under Chapter 773, Health

1 and Safety Code, as an emergency care attendant, emergency medical
2 technician, emergency medical technician-intermediate, emergency
3 medical technician-paramedic, or licensed paramedic; or

4 (C) a firefighter subject to certification by the
5 Texas Commission on Fire Protection under Chapter 419, Government
6 Code, whose principal duties are firefighting and aircraft crash
7 and rescue; or

8 (2) an individual covered under Section 504.012(a) who
9 is providing volunteer services to a political subdivision of this
10 state as:

11 (A) a volunteer firefighter, without regard to
12 whether the volunteer firefighter is certified under Subchapter D,
13 Chapter 419, Government Code; or

14 (B) an emergency medical services volunteer, as
15 defined by Section 773.003, Health and Safety Code.

16 (b) This section applies only to a first responder who
17 sustains a serious bodily injury, as defined by Section 1.07, Penal
18 Code, in the course and scope of employment. For purposes of this
19 section, an injury sustained in the course and scope of employment
20 includes an injury sustained by a first responder providing
21 services on a volunteer basis.

22 (c) The political subdivision, division, and insurance
23 carrier shall accelerate and give priority to an injured first
24 responder's claim for medical benefits, including all health care
25 required to cure or relieve the effects naturally resulting from a
26 compensable injury described by Subsection (b).

27 (d) The division shall accelerate, under rules adopted by

1 the commissioner of workers' compensation, a contested case hearing
2 requested by or an appeal submitted by a first responder regarding
3 the denial of a claim for medical benefits, including all health
4 care required to cure or relieve the effects naturally resulting
5 from a compensable injury described by Subsection (b). The first
6 responder shall provide notice to the division and independent
7 review organization that the contested case or appeal involves a
8 first responder.

9 (e) Except as otherwise provided by this section, a first
10 responder is entitled to review of a medical dispute in the manner
11 provided by Section 504.054.

12 Sec. 504.056. INTENT OF EXPEDITED PROVISION OF MEDICAL
13 BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN
14 COURSE AND SCOPE OF EMPLOYMENT. The purpose of Section 504.055 is
15 to ensure that an injured first responder's claim for medical
16 benefits is accelerated by a political subdivision, insurance
17 carrier, and the division to the full extent authorized by current
18 law.

19 SECTION 37. The following provisions of the Labor Code are
20 repealed:

- 21 (1) Section 413.031(1);
- 22 (2) Sections 415.0035(c), (d), and (f);
- 23 (3) Section 415.0036(c);
- 24 (4) Section 415.004;
- 25 (5) Section 415.008(b); and
- 26 (6) Section 415.022.

27 SECTION 38. Sections 1305.355(e), (f), and (g), Insurance

1 Code, as amended by this Act, and Section 1305.356, Insurance Code,
2 as added by this Act, apply to a medical dispute based on a review by
3 an independent review organization under Section 1305.355 that is
4 commenced on or after June 1, 2012. A dispute based on a review by
5 an independent review organization under Section 1305.355 that is
6 commenced before June 1, 2012, is governed by the law in effect
7 immediately before the effective date of this Act, and that law is
8 continued in effect for that purpose.

9 SECTION 39. (a) Section 402.073, Labor Code, as amended by
10 this Act, applies only to an administrative hearing that is
11 conducted on or after the effective date of this Act. An
12 administrative hearing conducted before the effective date of this
13 Act is governed by the law in effect when the hearing was conducted,
14 and the former law is continued in effect for that purpose.

15 (b) The State Office of Administrative Hearings and the
16 division of workers' compensation of the Texas Department of
17 Insurance shall adopt an updated memorandum of understanding
18 required by Section 402.073, Labor Code, as amended by this Act, not
19 later than June 1, 2012.

20 SECTION 40. Section 403.001, Labor Code, as amended by this
21 Act, and Section 403.008, Labor Code, as added by this Act, apply
22 only to an administrative penalty assessed for an administrative
23 violation that occurs on or after the effective date of this Act.
24 An administrative penalty assessed for an administrative violation
25 that occurred before the effective date of this Act is governed by
26 the law in effect when the violation occurred, and the former law is
27 continued in effect for that purpose.

1 SECTION 41. (a) The commissioner of workers' compensation
2 shall adopt the rules regarding certification of designated doctors
3 required by Section 408.1225, Labor Code, as amended by this Act,
4 not later than January 1, 2013.

5 (b) A designated doctor is not required to obtain
6 certification under Section 408.1225, Labor Code, as amended by
7 this Act, before January 1, 2013.

8 (c) Sections 408.1225(b), 413.044(b), and 413.0512(c),
9 Labor Code, as amended by this Act, apply only to a disciplinary
10 action taken against a designated doctor on or after January 1,
11 2013. A disciplinary action taken against a designated doctor
12 before that date is governed by the law as it existed immediately
13 before the effective date of this Act, and the former law is
14 continued in effect for that purpose.

15 (d) Section 408.0041(b), Labor Code, as amended by this Act,
16 and Section 408.0041(b-1), Labor Code, as added by this Act, apply
17 only to a medical examination by a designated doctor that occurs on
18 or after January 1, 2013. A medical examination that occurs before
19 that date is governed by the law as it existed immediately before
20 the effective date of this Act, and the former law is continued in
21 effect for that purpose.

22 SECTION 42. The change in law made by this Act in amending
23 Sections 409.021, 415.0035, 415.008, 415.009, 415.010, 415.021,
24 415.025, 415.032, 415.033, and 415.034, Labor Code, and Sections
25 2051.151 and 2053.206, Insurance Code, adding Section 415.0211,
26 Labor Code, and repealing Sections 415.0035(c), (d), and (f),
27 415.0036(c), 415.004, 415.008(b), and 415.022, Labor Code, applies

1 only to an administrative violation that occurs on or after the
2 effective date of this Act. An administrative violation that
3 occurs before the effective date of this Act is governed by the law
4 in effect on the date the violation occurred, and the former law is
5 continued in effect for that purpose.

6 SECTION 43. Sections 410.023 and 410.028, Labor Code, as
7 amended by this Act, apply only to a benefit review conference
8 requested on or after the effective date of this Act. A benefit
9 review conference requested before the effective date of this Act
10 is governed by the law in effect immediately before the effective
11 date of this Act, and that law is continued in effect for that
12 purpose.

13 SECTION 44. Sections 413.031(k) and (k-1) and 413.0311(a),
14 Labor Code, as amended by this Act, and Section 413.0312, Labor
15 Code, as added by this Act, apply only to the appeal of a medical fee
16 dispute under those sections that is based on a review conducted by
17 the division of workers' compensation of the Texas Department of
18 Insurance on or after June 1, 2012. The appeal of a medical fee
19 dispute that is based on a review conducted by the division of
20 workers' compensation before June 1, 2012, is governed by the law in
21 effect immediately before the effective date of this Act, and that
22 law is continued in effect for that purpose.

23 SECTION 45. Section 414.005, Labor Code, as amended by this
24 Act, applies only to an investigation or review conducted on or
25 after the effective date of this Act. An investigation or review
26 conducted before the effective date of this Act is governed by the
27 law in effect when the investigation or review was conducted, and

1 the former law is continued in effect for that purpose.

2 SECTION 46. Section 415.036, Labor Code, as added by this
3 Act, applies only to an order of the commissioner of workers'
4 compensation issued on or after the effective date of this Act. An
5 order of the commissioner that was issued before the effective date
6 of this Act is governed by the law in effect when the order was
7 issued, and the former law is continued in effect for that purpose.

8 SECTION 47. Section 504.055, Labor Code, as added by this
9 Act, applies only to a claim for workers' compensation benefits
10 based on a compensable injury that occurs on or after the effective
11 date of this Act. A claim based on a compensable injury that occurs
12 before that date is governed by the law in effect on the date the
13 compensable injury occurred, and the former law is continued in
14 effect for that purpose.

15 SECTION 48. This Act takes effect September 1, 2011.

David Newhurst

President of the Senate

Joe Straus

Speaker of the House

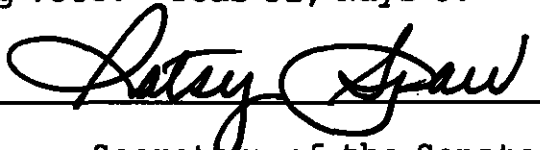
I certify that H.B. No. 2605 was passed by the House on April 19, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2605 on May 25, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2605 on May 29, 2011, by the following vote: Yeas 147, Nays 0, 2 present, not voting.

Robert Haney

Chief Clerk of the House

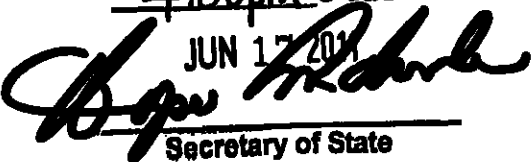
H.B. No. 2605

I certify that H.B. No. 2605 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2605 on May 29, 2011, by the following vote: Yeas 31, Nays 0.


Secretary of the Senate

APPROVED: 17 JUN '11
Date


Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:00 PM O'CLOCK
JUN 17 2011

Secretary of State